

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

LEROY A. THOMAS,	:	CIVIL ACTION NO. 1:05-CV-2689
	:	
Plaintiff	:	(Judge Conner)
	:	
v.	:	
	:	
UNITED STATES,	:	
	:	
Defendant	:	
	:	
	:	
	:	

ORDER

AND NOW, this 22nd day of May 2008, upon consideration of the report of the magistrate judge (Doc. 54), to which no objections were filed, recommending that defendant's motion for summary judgment (Doc. 36) be granted, and, following an independent review of the record, it appearing that plaintiff has failed to offer any evidence to suggest that defendant breached a duty of care owed to him, that plaintiff has failed to meet his burden to provide expert testimony sufficient to establish that defendant's alleged negligent behavior caused his injury, see Simpson v. Fed. Bureau of Prisons, Civ. No. 2-2313, 2005 WL 2387631, at *5 (M.D. Pa. Sept. 28, 2005) (citing Grossman v. Barke, 868 A.2d 561, 566-67 (Pa. Super. Ct. 2005)), and that plaintiff's claim is barred under the theories of assumption of the risk and contributory negligence, it is hereby ORDERED that:

1. The report and recommendation of the magistrate judge (Doc. 54) is ADOPTED.
2. Defendant's motion for summary judgment (Doc. 36) is GRANTED.
3. Any appeal from this order is DEEMED frivolous and not in good faith. See 28 U.S.C. § 1915(a)(3).
4. The Clerk of Court is directed to CLOSE this case.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge